Guman Singh vs. Union of India
(S.B.C.Writ Petition No.3054/03)

Dated: 17th April,2006.

HON'BLE MR.JUSTICE R.C.GANDHI

Mr.R.S.Saluja, for the petitioner.
Mr.Ravi Bhansali, for the respondents.

(ORAL)

The petitioner by means of this petition seeks issuance of writ of mandamus directing the respondents to continue to pay disability pension stopped by the respondents w.e.f. 16.2.1988 .

The petitioner has averred in the petition that he was appointed in the Indian Army on 24.9.1965. He was invalided out of service on account of disability on 9.12.1969 after serving a period of 4 years and 8 days. He was informed by the respondents vide letter dated 24.10.1987(Annexure 1) to appear before the Re-survey Medical Board (for short "the Board" hereinafter). However, vide letter dated 8th April,1989(Annexure 4) he was informed that as his disability has been assessed less than 20% , his disability pension has been discontinued w.e.f. 18th February,1988. It is further averred in the petition that pursuant to the instructions issued in the year 1975 by the respondents,once the disability pension is granted, same cannot be withheld or dis-continued and in that regard he has relied upon the judgment of this Court delivered in case title "**Rampal Singh vs. Union of India & Ors.**", reported in WLC(UC) Raj. 2003, 75.

The respondents have filed reply stating therein that

the petitioner was enrolled in the Army on 24th September,1965 and invalided out of service w.e.f. 9th December,1969 under Rule 13(3)III (iii) of the Army Rules having placed in medical category "EEE" as a case of "PULMONARY TUBERCULOSIS-011" by a Invaliding Medical Board held at Military Hospital, Namkum on 9.12.1969. His disability was assessed at 100% as attributable to military service for one year. He was granted disability pension from 10.12.1969 to 8.12.1970 by CDA(P), Allahabad vide PPO NO.D/2975/70. Thereafter, periodical Re-survey Medical Boards were held and the disability pension was continued to the petitioner till 17th February,1988 as his disability was assessed more than 20%. Again Re-Survey Medical Board was held at Military Hospital at Jodhpur on 24.12.1987 which assessed the disability of the petitioner permanently at 20%. Accordingly, his case of disability pension was forwarded to CDA(P), Allahabad vide letter dated 29.2.1988 for adjudication. The claim of the petitioner was adjudicated by the CDA (P), Allahabad in consultation with the Medical Adviser (Pension), who did not agree with the assessment of the Medical Board and thus, assessed the disability of the petitioner as Nil for life. In consequence thereof, the petitioner became ineligible for disability pension in terms of Para 173 of the Pension Regulations for the Army, 1961(Part-1) and his disability pension has been discontinued w.e.f. 18.2.1988.

Heard learned counsel for the parties and perused the record.

The petitioner was granted disability pension having assessed the disability at 100% attributable to military service in the year 1970. His disability was reassessed by the Medical Board and till 17th February,1988 he was granted disability pension as his disability was more than 20%. Having found the disability of the petitioner less than 20% in the year 1987, his disability pension has been stopped.

Learned counsel for the petitioner has submitted that the disability pension once granted cannot be dis-continued in terms of the Army Instructions No.4/S/75 issued under Notification dated 19.12.1975, which reads as under:-

> "Where an individual is invalided out of service before completion of his prescribed engagement/service limit on account of a disability which attributable to or aggravated by military service and is assessed below 20 percent, he will be granted an award equal to service element of disability pension determined in the manner given in Regulation 183 Pension Regulations for the Army, Part I(1961), read with Appendix A to AI 1/S/75. **This benefit will also be allowed in all cases where an individual is granted disability pension but whose degree of disablement subsequently falls below 20 percent."**

This Government Notification in similar facts have been considered by a coordinate Bench of this Court in case title "Smt. Teeja Devi vs. U.O.I.,reported in 2005(8) RDD, 3030 and held that the respondents have not extended the benefit of said circular to the petitioner. The Court while interpreting and maintaining the right of the petitioner in the said petition for his continued disability pension, observed as under :-

> "8. In the instant case the disease suffered by the petitioner during and in the course of service was attributable to military service, as such the petitioner was fully entitled to disability pension and service element. In the instant case the judicial pronouncement granting service element of pension to all ex-servicemen irrespective of their date of retirement came to be pronounced during 1992 in the case of Ramroop Singh vs. Union of India, reported in 1993(III) CSJ(HC 49(Allahabad). Therefore the relief sought by the petitioner cannot be denied.

9. As already noticed the policy decision was taken

> during 1975 that person whose disability pension has been reduced below 20% and resultantly their disability pension had been discontinued shall be granted service element of pensions for life if the disability in question was attributable to military service or aggravated thereby irrespective of length of service. However, this decision was made effective from January 1, 1973 onwards and the persons retired prior to this cut off date were deprived of such concession. This aspect of cut off date came to be examined judicially in the case of Ramroop Singh vs. Union of India(supra), and it was held that all ex-servicemen shall be entitled to pensionary benefits regardless to their date of retirement. Ratio indicated in Ramroop Singh vs. Union of India(supra), is squarely applicable to the facts of the instant case. Further the respondents did not inform the husband of the petitioner about discontinuance of the disability pension. Since, the husband of petitioner was entitled for the pensionary benefits, the petitioner is entitled for family pension."

The case of the petitioner is similar to that of Teeja Devi vs. U.O.I.(supra) which has been decided by this Court and that judgment applies with all force.

The writ petition is accordingly allowed. The petitioner is held entitled to the continuation of his disability pension. The respondents are directed to continue to pay the disability pension to the petitioner. The arrears shall also be paid to the petitioner within four months.

(R.C.GANDHI),J.